

REMARKS / ARGUMENTS

Reconsideration of the application as amended is respectfully requested.

Before entry of the present amendment, Claims xx were pending.

The examiner objected to the description of "C-shaped framework" in the claims. The description has been removed from Claims 1 and 8. However, it should be noted, that Fig. 3 depicts the framework as having a general C-shape (turned on its side). The use of "V-shape" does not seem proper, and "U-shape" is no more accurate than "C-shape." However, to avoid confusion, the label has been deleted from Claims 1 and 8. Withdrawal of this objection is respectfully requested.

Claims 1-7 were rejected under 35 U.S.C. § 112, 2nd Paragraph, based on the use of the word "conventional." That word has been deleted from Claims 1 and 2. Withdrawal of this objection is respectfully requested.

In undertaking to determine whether one reference anticipates the claim(s) of an application under 35 U.S.C. § 102(a), § 102(b) or § 102(e), a primary tenet is that the reference must teach every element of the claim(s). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Each and every element of the claimed invention must be disclosed in a single prior art reference "arranged as in the claim." Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984).

As amended, Claim 1 recites (quoting for convenience):

1. A universal, adjustable boat platform comprising:
a telescopically adjustable tubular framework coupled between bench seats
of a V-hull boat; and
a vertically adjustable seat.

Thus, Claim 1 recites an apparatus having a platform, a telescopically adjustable frame coupled between the bench seats of a boat and a vertically adjustable seat. In contrast, Johnson discloses an auxiliary boat seat having a boat frame mounted between the *side walls* of the boat. Thus, Johnson fails to disclose the platform and the framework placed between bench seats of a boat as recited in Claim 1 of the present invention. Johnson fails to disclose every element of Claim 1, and further fails to disclose every element as arranged in Claim 1. Therefore, Claim 1 is patentably distinguishable over Johnson. Withdrawal of this rejection is respectfully requested.

As amended, Claim 8 recites (quoting for convenience):

8. A universal, adjustable platform comprising:
a telescopically adjustable tubular framework;
a vertically adjustable casting seat;
a platform for providing a flat, level, stable and elevated surface from which
to perform fishing operations from; and
a captive pin set for securing said a platform said a frame.

Thus, Claim 8 recites an apparatus having a telescopically adjustable frame placed between the bench seats of a boat, a vertically adjustable seat, a flat and stable platform, and a captive pin set for securing the platform to the frame. In contrast, Johnson discloses an auxiliary boat seat having a boat frame mounted between the *side walls* of the boat. Thus, Johnson fails to disclose the platform as recited in Claim 8 of the present invention. Johnson fails to disclose every element of Claim 8, and further fails to disclose every element as arranged in Claim 8. Therefore, Claim 8 is patentably

distinguishable over Johnson. Withdrawal of this rejection is respectfully requested.

Claims 9-11 are also considered patentably distinguishable over Johnson because of direct dependence from an independent claim (Claim 8) patentably distinct from the prior art.

As to Claims 2, 3 and 5-7, and as amended, Claim 2 recites (quoting for convenience):

2. An adjustable boat platform insert for installation upon a V-bottom boat comprising:
 - a platform for providing a flat, level, stable and elevated surface from which to perform fishing operations from;
 - a frame attached to an inside of a V-bottom boat;
 - and
 - a captive pin set for securing said platform to said frame.

Thus, Claim 2 describes an adjustable boat platform that has a flat, level, stable platform, a frame attached to the inside of a V-bottom boat and a captive pin set securing the platform to the frame.

In contrast, Loffler discloses a kit for attachment to a *multi-hull* watercraft in which the deck assumes the contour of the two watercraft that are joined by the deck. Loffler fails to disclose a frame that is attached to the inside of a single V-bottom boat. Therefore, Loffler fails to disclose every element of Claim 2, as arranged in Claim 2. Thus, Claim 2 is patentably distinguishable over Loffler. Withdrawal of this rejection is respectfully requested.

Claims 3, 5, 6 and 7 are also considered patentably distinguishable over Loffler because of direct or indirect dependence from an independent claim (Claim 2) patentably distinct from the prior art. Withdrawal of this rejection is respectfully requested.

In undertaking a determination of whether a reference, or a combination of references, renders a claim(s) obvious under 35 U.S.C. § 103(a), the examiner must show that the reference or combination of references teach or suggest every element of the claim(s) in question. MPEP §

706.02(j).

To reiterate, Claim 2 recites an adjustable boat platform that has a flat, level, stable platform, a frame attached to the inside of a V-bottom boat and a captive pin set securing the platform to the frame. In contrast, Johnson discloses an auxiliary boat seat having a boat frame mounted between the *side walls* of the boat. Johnson fails to disclose, claim, teach or suggest a flat, level, stable platform as recited in Claim 2. Thus, Johnson fails to disclose, claim, teach or suggest every element of Claim 2 as required. Therefore, Claim 2 is patentably distinguishable over Johnson. Withdrawal of this rejection is respectfully requested.

Claim 4 is also considered patentably distinguishable over Loffler because of direct dependence from an independent claim (Claim 2) patentably distinct from the prior art. Withdrawal of this rejection is respectfully requested.

Claims 9, 10 and 11 are dependent from independent Claim 8, which is patentably distinct over Johnson for the reasons cited above, and incorporated by reference as if rewritten in its entirety. Thus, the combination of Johnson and Anthonijsz fail to disclose every element of the combination of Claim 8 with Claims 9, 10 and 11, respectively. Withdrawal of this rejection is respectfully requested.

In regard to the several rejections of the claims under 35 U.S.C. § 103(a), based upon the above arguments, it is felt that the differences between the present invention and all of these references are such that rejection based upon 35 U.S.C. § 103(a), in addition to any other art, relevant or not, is also inappropriate. However, by way of additional argument applicant wishes to point out that it is well established at law that for a proper *prima facie* rejection of a claimed invention based

upon obviousness under 35 U.S.C. § 103(a), the cited references must teach every element of the claimed invention. Further, if a combination is cited in support of a rejection, there must be some affirmative teaching in the prior art to make the proposed combination. See Orthopedic Equipment Company, Inc. et al. v. United States, 217 USPQ 193, 199 (Fed. Cir. 1983), wherein the Federal Circuit decreed, "Monday Morning Quarter Backing is quite improper when resolving the question of obviousness." Also, when determining the scope of teaching of a prior art reference, the Federal Circuit has declared:

"[t]he mere fact that the prior art could be so modified should not have made the modification obvious unless the prior art suggested the desirability of the modification." (Emphasis added). In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

There is no suggestion as to the desirability of any modification of the references to describe the present invention. An analysis of the disclosures within the cited references fails to cite every element of the claimed invention. When the prior art references require a selective combination to render obvious a subsequent claimed invention, there must be some reason for the selected combination other than the hindsight obtained from the claimed invention itself. Interconnect Planning Corp v. Feil, 774 F.2d 1132, 227 USPQ 543 (Fed. Cir. 1985). There is nothing in the prior art or the Examiners arguments that would suggest the desirability or obviousness of making an adjustable platform for a boat having a telescopically adjustable frame upon which a flat platform is secured. Uniroyal, Inc. v. Rudkci-Wiley Corp., 837 F.2d 1044, 5 USPQ 2d 1432 (Fed. Cir. 1988). The examiner seems to suggest that it would be obvious for one of ordinary skill to attempt to produce the currently disclosed invention. However, there must be a reason or suggestion in the art

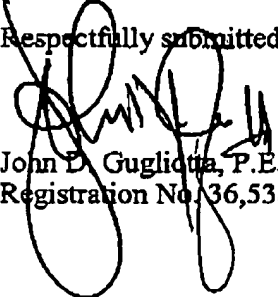
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for selecting the design, other than the knowledge learned from the present disclosure. In re Dow Chemical Co., 837 F.2d 469, 5 USPQ.2d 1529 (Fed. Cir. 1988); see also In re O'Farrell, 853 F.2d 894, 7 USPQ 2d 1673 (Fed. Cir. 1988).

To summarize, it appears that only in hindsight does it appear obvious to one of ordinary skill in the pertinent art to combine the present claimed and disclosed combination of elements. To reject the present application as a combination of old elements leads to an improper analysis of the claimed invention by its parts, and instead of by its whole as required by statute. Custom Accessories Inc. v. Jeffery-Allan Industries, Inc., 807 F.2d 955, 1 USPQ 2d 1197 (Fed. Cir. 1986); In re Wright, 848 F.2d 1216, 6 USPQ 2d 1959 (Fed. Cir. 1988).

Therefore, in view of foregoing amendments and clarifications, the applicant submits that allowance of the present application and all remaining claims, as amended, is in order and a formal Notice of Allowance is respectfully requested at the earliest possible date.

Respectfully submitted,


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